

ORDINANCE NUMBER 02-10077

AN ORDINANCE CREATING CHAPTER 30.5 “PUBLIC HEALTH” TO THE SALINA CODE AND ADDING ARTICLE I TO CHAPTER 30.5 SMOKING IN RESTAURANTS.

BE IT ORDAINED by the Governing Body of the City of Salina, Kansas:

Section 1. Findings.

(a) Smoking areas may be designated pursuant to K.S.A. 21-4010 by proprietors or other persons in charge of public places, except those places where smoking is prohibited by law.

(b) There exists a substantial body of scientific research demonstrating that smoking and the effects of second hand smoke pose significant health hazards to persons who are in the presence of smokers.

(c) Kansas statutory law regarding smoking in public places addresses at K.S.A. 21-4013 the potential for city or county regulation of smoking within its boundaries, so long as such regulation is at least as stringent as state law.

Section 2. That Chapter 30.5 “Public Health” and Article I pertaining to Smoking in Restaurants is hereby added to the Salina Code to read as follows:

“CHAPTER 30.5 PUBLIC HEALTH

Article I. Smoking in Restaurants.

Sec. 30.5-1. Public Policy.

It shall be the public policy of the city to promote the health and welfare of its citizens and the traveling public by increasing substantially the opportunity to enjoy public dining without the health hazard posed by second-hand smoke.

Sec. 30.5-2. Definitions.

For the purpose of this article, the following words and terms as used herein are defined to mean the following:

(1) *Accessory bar* means a place within a restaurant for the incidental service of alcoholic beverages and associated snacks, appetizers, and other products for consumption on the premises. Full restaurant food service shall not be available in an accessory bar.

(2) *Bingo Hall* means any room, hall, building, enclosure or outdoor area used for the management, operation or conduct of a game of bingo by any nonprofit organization holding a license to manage, operate or conduct games of bingo pursuant to Kansas law and in which food service for consumption on the premises is incidental to the primary activity of the establishment.

(3) *Bowling Center/Alley* means a place of business open to the public which offers the use of not less than twelve full scale bowling lanes that are each equipped with operable automatic pin setting apparatus and in which food service for consumption on the premises is incidental to the primary activity of the establishment.

(4) *Class A club* means a premises so licensed by the state of Kansas which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans’ club, as determined by the director, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or

associates (referred to as members) and their families and guests accompanying them.

(5) *Class B club* means a premises so licensed by the state of Kansas operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(6) *Drinking Establishment* means premises so licensed by the state of Kansas which may be open to the general public, where alcoholic liquor by the individual drink is sold.

(7) *Hotel/motel non-retail dining area* means that area in a hotel or motel designated for serving and consumption of non-retail “complementary” food or beverages served by the hotel or motel to those persons renting a hotel or motel room.

(8) *Licensed Club* means a class A or class B club with a valid license issued by the state of Kansas.

(9) *Other person in charge* means the agent of the proprietor authorized to perform administrative direction to, and general supervision of, the activities within a restaurant at any given time.

(10) *Physically separated* means separated from the smoke-free restaurant area by continuous floor-to-ceiling walls which are interrupted only by doors which are continuously closed other than when a person is actively entering or exiting the smoke-free area.

(11) *Private dining or banquet room* means an entire restaurant, room or hall used for a private social function and for which seating arrangements are in control of the sponsor of the function and not the proprietor or person in charge of the room or hall.

(12) *Proprietor* means the party, regardless of whether or not the party is owner or lessee of the restaurant, who ultimately controls, governs, or directs the activities within the restaurant. The term does not mean the owner of the property, unless the owner ultimately controls, governs, or directs the activities within the restaurant. The term *proprietor* may apply to a corporation, partnership or limited liability company as well as to an individual.

(13) *Recreational facility* means a place of business open to the public for the primary purpose of offering for use game tables or other mechanical forms of entertainment or competition and in which food service for consumption on the premises is incidental to the primary activity of the establishment.

(14) *Restaurant* means a building, structure, enclosure, or any part of a building, structure, or enclosure with table, booth, or counter seating for eleven (11) or more persons and used as, maintained as, advertised as, or held out to be an operation which prepares, serves or otherwise provides for sale of food and beverages for consumption on the premises.

(15) *Separate designated smoking area* means an indoor area where smoking is allowed, physically separated from the required smoke-free restaurant areas, and which includes physical separation and appropriate ventilation so that smoke from those areas does not drift, permeate, or recirculate into any smoke-free restaurant areas.

(16) *Smoking* means the:

- a. Carrying or placing of a lighted cigarette, lighted cigar, or lighted pipe or any other lighted smoking equipment in one's mouth for the purpose of inhaling and exhaling smoke;
- b. Placing of a lighted cigarette, lighted cigar, or lighted pipe or any other lighted smoking equipment in an ashtray or other receptacle and allowing smoke to diffuse in the air; or
- c. Carrying or placing of a lighted cigarette, lighted cigar, or lighted pipe or any other lighted smoking equipment in one's hands or any appendage or devices and allowing smoke to diffuse in the air.

Sec. 30.5-3. Regulation of Smoking.

Smoking shall not be permitted in a restaurant, except as follows:

- (1) Outdoor or sidewalk seating. Smoking may be permitted in the outdoor or sidewalk seating portions of a restaurant if the outdoor or sidewalk seating area and the indoor smoke-free restaurant area are physically separated.
- (2) Time of day exception. The provisions of this ordinance shall not apply to a restaurant during that time between 9:00 p.m. and 5:00 a.m. During that time, a proprietor of a restaurant may designate a smoking area in accordance with K.S.A. 21-4009 et seq.

Sec. 30.5-4. Restaurant Located in a Larger Facility.

When a restaurant is located within a facility larger than the area used for the restaurant, no person shall smoke in the entire facility unless the proprietor or other person in charge of the facility has designated a smoking area which qualifies as a separate designated smoking area as defined by this ordinance. Restaurants located within a larger facility include, without limitation, restaurants in truck stops, hotels, retail establishments, and convention or meeting facilities.

Sec. 30.5-5. Requirements Relating to Physical Separation and Ventilation.

The city building official is authorized to make reasonable requirements and determinations consistent with the building code and this ordinance with regard to physical separation and appropriate ventilation in any case where those requirements need to be applied to smoke-free restaurant areas adjacent or connected to areas in which smoking is permitted.

Sec. 30.5-6. Exemptions.

The prohibition against smoking in restaurants set forth in this ordinance shall not apply to a:

- (1) Licensed club;
- (2) Bowling center/alley;
- (3) Bingo hall;
- (4) Recreational facility;
- (5) Hotel/motel non-retail dining area;
- (6) Private dining or banquet room; or

which, if located within a facility in which a restaurant is also located, must meet the separation and ventilation requirements of a separate designated smoking area.

Sec. 30-5.7. Waiver for Certain Licensed Drinking Establishments.

(a) Licensed drinking establishments which derive from sales of food for consumption on the licensed drinking establishment premises not in excess of 30% of its gross receipts from all sales of food and beverages on such premises in a 12-month period shall be eligible for a waiver from the requirements of this ordinance. In order to obtain such a waiver, application shall be made by the holder of the drinking establishment license verifying by sworn affidavit that the drinking establishment falls below the maximum food sales ratio. The city may, at its discretion and from time to time, require from the drinking establishment licensee copies of reports filed by the licensee with the Kansas Department of Alcohol and Beverage Control in order to verify licensee's food sales ratio.

(b) Drinking establishment licensees seeking to open a drinking establishment or substantially change operation of an existing establishment so that it may operate under the waiver for qualifying licensed drinking establishments shall provide a sworn affidavit and agreement which shall state that the licensee's business plan projections indicate sales of food for consumption on the licensed drinking establishment premises shall not exceed 30% of its gross receipts from all sales of food and beverages on such premises.

Sec. 30.5-8. Responsibility of Proprietors.

The proprietor or other person in charge of a place governed by this ordinance shall:

- (1) Meet all signage requirements;
- (2) Advise any person smoking in an area where smoking is prohibited that he or she is smoking in violation of city ordinance;
- (3) Advise any person who smokes in an area where smoking is prohibited by this ordinance to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, shall ask the person to leave. If the offending person refuses to leave, the proprietor shall handle the situation consistent with lawful methods for handling persons acting in a disorderly manner or as a trespasser;
- (4) Remove all ashtrays and other smoking paraphernalia from areas where smoking is prohibited; and
- (5) In the case of a restaurant located within a facility larger than the area used for the restaurant, comply with all physical separation and ventilation standards to prevent the drifting, permeation, or recirculation of smoke from any separate designated smoking area into the adjacent or connected areas of the restaurant.

Sec. 30.5-9. Penalties.

Violation of the prohibition against smoking in a restaurant set forth in this ordinance shall be classified as an ordinance cigarette or tobacco infraction and shall be punishable by a fine in the amount established by state law as the fine for a cigarette or tobacco infraction (currently \$25). Violation of the responsibilities of proprietors and other persons in charge of a place governed by this ordinance shall be punishable under the general penalty provisions of Salina Code Section 1-10.

Sec. 30.5-10. Administrative Regulations.

Rules and regulations pertaining to signage, extensions of time for compliance-related construction, or other matters necessary for the implementation of this ordinance shall be adopted by resolution of the governing body.”

Section 3. Effective Date. This ordinance shall be in full force and effect 60 days after its adoption and publication once in the official city newspaper.

Introduced: April 15, 2002
Passed: May 6, 2002

Kristin M. Seaton, Mayor

[SEAL]

Attest:

Lieu Ann Nicola, City Clerk